

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1211

Introduced by Assembly Member Torrico

February 27, 2009

~~An act relating to criminals gangs.~~ *An act to amend Section 272 of the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1211, as amended, Torrico. ~~Gang recruitment: penalties.~~ *Contributing to delinquency of minors: criminal street gang participant.*

Under existing law, every person who commits an act or omits the performance of any duty which causes a minor to become a dependent of the court, or any person who induces a minor to fail to conform to a lawful order, is guilty of a misdemeanor.

This bill would additionally provide that any person who omits the performance of any duty which causes a minor to become an active participant in a criminal street gang, as specified, is guilty of a misdemeanor. Because the bill would create a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes provisions governing the punishment of criminal gang activities.~~

~~This bill would declare the Legislature's intent to enact legislation to create the crime of criminal gang recruiting, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 272 of the Penal Code is amended to*
2 *read:*

3 272. (a) (1) Every person who commits any act or omits the
4 performance of any duty, which act or omission causes or tends
5 to cause or encourage any person under the age of 18 years to come
6 within the provisions of Section 300, 601, or 602 of the Welfare
7 and Institutions Code or which act or omission contributes thereto,
8 or any person who, by any act or omission, or by threats,
9 commands, or persuasion, induces or endeavors to induce any
10 person under the age of 18 years or any ward or dependent child
11 of the juvenile court to fail or refuse to conform to a lawful order
12 of the juvenile court, or to do or to perform any act or to follow
13 any course of conduct or to so live as would cause or manifestly
14 tend to cause that person to become or to remain a person within
15 the provisions of Section 300, 601, or 602 of the Welfare and
16 Institutions Code, is guilty of a misdemeanor and upon conviction
17 thereof shall be punished by a fine not exceeding two thousand
18 five hundred dollars (\$2,500), or by imprisonment in the county
19 jail for not more than one year, or by both fine and imprisonment
20 in a county jail, or may be released on probation for a period not
21 exceeding five years.

22 (2) For purposes of this subdivision, a parent or legal guardian
23 to any person under the age of 18 years shall have the duty to
24 exercise reasonable care, supervision, protection, and control over
25 their minor child.

26 (b) (1) An adult stranger who is 21 years of age or older, who
27 knowingly contacts or communicates with a minor who is under
28 14 years of age, who knew or reasonably should have known that
29 the minor is under 14 years of age, for the purpose of persuading
30 and luring, or transporting, or attempting to persuade and lure, or
31 transport, that minor away from the minor's home or from any
32 location known by the minor's parent, legal guardian, or custodian,
33 to be a place where the minor is located, for any purpose, without

1 the express consent of the minor's parent or legal guardian, and
2 with the intent to avoid the consent of the minor's parent or legal
3 guardian, is guilty of an infraction or a misdemeanor, subject to
4 subdivision (d) of Section 17.

5 (2) This subdivision shall not apply in an emergency situation.

6 (3) As used in this subdivision, the following terms are defined
7 to mean:

8 (A) "Emergency situation" means a situation where the minor
9 is threatened with imminent bodily harm, emotional harm, or
10 psychological harm.

11 (B) "Contact" or "communication" includes, but is not limited
12 to, the use of a telephone or the Internet, as defined in Section
13 17538 of the Business and Professions Code.

14 (C) "Stranger" means a person of casual acquaintance with
15 whom no substantial relationship exists, or an individual with
16 whom a relationship has been established or promoted for the
17 primary purpose of victimization, as defined in subdivision (e) of
18 Section 6600 of the Welfare and Institutions Code.

19 (D) "Express consent" means oral or written permission that is
20 positive, direct, and unequivocal, requiring no inference or
21 implication to supply its meaning.

22 (4) This section shall not be interpreted to criminalize acts of
23 persons contacting minors within the scope and course of their
24 employment, or status as a volunteer of a recognized civic or
25 charitable organization.

26 (5) This section is intended to protect minors and to help parents
27 and legal guardians exercise reasonable care, supervision,
28 protection, and control over minor children.

29 *(c) (1) Every person who omits the performance of any duty,*
30 *which omission causes any person under 18 years of age to become*
31 *an active participant in a criminal street gang, as specified in*
32 *subdivision (a) of Section 186.22, is guilty of a misdemeanor. Upon*
33 *conviction thereof, he or she shall be punished by a fine not*
34 *exceeding two thousand five hundred dollars (\$2,500), or by*
35 *imprisonment in the county jail for not more than one year, or by*
36 *both fine and imprisonment in a county jail.*

37 *(2) For purposes of this subdivision, a parent or legal guardian*
38 *to any person under the age of 18 years shall have the duty to*
39 *exercise reasonable care, supervision, protection, and control over*
40 *their minor child.*

1 (3) *The parental diversion provisions of Chapter 2.9B*
2 *(commencing with Section 1001.70) of Title 6 of Part 2 shall apply*
3 *to this subdivision.*

4 *SEC. 2. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 ~~SECTION 1. It is the intent of the Legislature to enact~~
14 ~~legislation to create the crime of criminal gang recruiting. This~~
15 ~~crime would punish adults who have been previously convicted~~
16 ~~of a felony and who solicit a minor in order to involve the minor~~
17 ~~in the commission of a felony.~~